

(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

DATE: OCT 29 2013

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Rachel NiToro
for

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a business providing computer services and corporate resources. It seeks to employ the beneficiary permanently in the United States as a lead network and computer systems administrator pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

The director determined that the petitioner had not established that it had the ability to pay the beneficiary the proffered wage from the priority date of the visa petition onward. He denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On August 16, 2013, the AAO sent the petitioner a Notice of Intent to Dismiss (NOID) and Request for Evidence (RFE), with a copy to counsel of record. In this notice, the AAO informed the petitioner that, despite its submission of additional evidence in support of the appeal, the record did not offer a clear picture of the financial obligations created by its multiple filings of Form I-140, Immigrant Petition for Alien Worker, petitions. Accordingly, the petitioner was asked to provide additional evidence relating to several Form I-140 petitions submitted in late 2012 and early 2013, its reporting of proffered wage information, the adjustment of status of certain Form I-140 beneficiaries and its claim to have withdrawn several Form I-140 petitions. The notice allowed the petitioner 30 days in which to submit a response. The AAO informed the petitioner that failure to respond would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the AAO's NOID and RFE. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). Since the petitioner failed to respond to the NOID and RFE, the appeal will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.